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No. 89-988

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1989

CHEVRON CORPORATION, et al.,
Petitioners,

VS.

THE CITY OF LONG BEACH, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

ROYCE H. SCHULZ
GARY L. HALLING*
THOMAS D. NEVINS
BROAD, SCHULZ,
LARSON & WINEBERG
One California Street, 14th Fl.
San Francisco, CA 94111
(415) 986-0300

GARY W. HOECKER
M. BRIAN MCMAHON
HOECKER, MCMAHON &
WADE
612 S. Flower Street
Suite 800
Los Angeles, CA 90017
(213) 617-8133

Counsel for Respondents

* Counsel of Record

[Additional Counsel Listed on Inside Cover]

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

QUESTION PRESENTED

The questions posed by petitioners are not those created by the record.* The case presents only one question:

Does *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987) permit removal of a state court case in which the complaint does not facially present a federal question when defendants anticipate having a federal collateral estoppel defense if interlocutory rulings in an ongoing federal case result in a judgment?

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* Petitioners' statement of questions presented might be read to imply that petitioners are seeking review of the Court of Appeals' reversal of summary judgment of a pendent claim asserted in the case respondents filed in federal court ("*Long Beach I*"). Even if the point is deemed raised, it is appropriately deemed abandoned because petitioners have not briefed it.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

Respondents respectfully request that a writ of certiorari to review two judgments of the United States Court of Appeals for the Ninth Circuit be denied.

Respondents agree with the jurisdictional statement of the petitioners.

STATUTES INVOLVED

In addition to 28 U.S.C. § 1441(a), cited by petitioners, the following statutes are also involved:

1. 28 U.S.C. § 1331. Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

2. California Uniform Commercial Code

Sec. 1203. Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement.

Sec. 2103(1)(b). "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

Sec. 2305(2). A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

STATEMENT OF THE CASE

Respondents State of California ("State") and City of Long Beach ("City") brought two actions against these petitioners: (1) *City of Long Beach, et al. v. Standard Oil Company of California, et al. ("Long Beach I")*, a federal action filed in 1975 seeking damages for the period preceding 1978, and charging petitioners with conspiracy to fix prices for respondents' crude oil in violation of § 1 of the Sherman Act,[1] with which respondents joined a pendent contract claim for breach of the implied covenant of good faith under California law; (2) *People of the State of California, et al. v. Chevron Corporation ("Long Beach II")* filed in state court in 1986, the complaint on its face charging no federal claim, and seeking relief for conduct of the petitioners during the period 1980-85. A new plaintiff, the People of the State of California ("People"), brought claims for civil penalties in *Long Beach II*.

The district court denied remand of *Long Beach II* to state court based on petitioners' arguments that federal jurisdiction was conferred because *Long Beach II* was "artfully pleaded" to avoid adverse interlocutory rulings on the pendent "good faith" contract

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[1] Two certiorari petitions are simultaneously pending to review the decision of the Court of Appeals reversing summary judgment in favor of petitioners on the antitrust claims in *Long Beach I: Standard Oil Company of California, et al. v. The City of Long Beach, et al.*, No. 89-987 and *Exxon Corporation, et al. v. The City of Long Beach, et al.*, No. 89-990.

claim made in *Long Beach I*. App. 89a. These *Long Beach I* rulings had not ripened into a judgment when the district court denied remand of *Long Beach II*.[2] Judgment on the "good faith" claim in *Long Beach I* was not entered until July 30, 1987, over one year *after* the *Long Beach II* removal petition was filed. App. 94a.[3]

Based on summary judgment on the pendent "good faith" claim in *Long Beach I*, the district court granted partial summary judgment in *Long Beach II*, dismissing the first five counts of the complaint and corresponding portions of the tenth count.[4] The district court decided that the issues in the dismissed counts of *Long Beach II* were sufficiently similar to the claim for breach of the implied covenant of good faith and fair dealing in *Long Beach I* that it applied collateral estoppel. App. 83a, 89a.[5]

Long Beach II involved new causes of action based on conduct that took place years after the activities challenged in *Long Beach I*. Despite denial of any discovery, respondents produced abundant evidence of different material facts present in *Long*

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[2] Respondents' motion in *Long Beach I* for reconsideration of the "good faith" contract rulings was pending at the time of removal, as the district court's initial decision denying remand recites. App. 64a.

[3] The Court of Appeals' opinion mistakenly states that a summary judgment had been entered on all *Long Beach I* claims before removal of *Long Beach II*. *E.g.*, App. 22a, 25a & n. 6. Respondents called the error to the court's attention in their reply to petitioners' petition for rehearing, but the court did not correct it. Respondents' Response to Petition for Rehearing, p. 2 & n. 3.

[4] These state law counts were for unfair competition and breach of duty to the public trust, breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, deceit and negligent misrepresentation.

[5] The district court refused to find collateral estoppel applicable to the Cartwright Act antitrust claim, and therefore exercised only pendent jurisdiction over it. App. 89a-90a. The Cartwright Act claim remains pending in the district court. The district court remanded respondents' counts alleging unlawful operation of intrastate crude oil pipelines to the California Superior Court.

Beach II. For example, different exchange mechanisms were instituted by petitioners to avoid undervalued posted prices (*Long Beach II* ER 806-48, 853-54),[6] the Federal Trade Commission ("FTC") record on the Texaco/Getty merger revealed that independent refiners complained of paying premiums above posted prices,[7] and Texaco admitted in an FTC filing that posted prices were "lower than market". *Long Beach II* ER 760. *Long Beach II* also included a new contract never sued upon before (the LBOD Agreement) (*Long Beach II* ER 142-241), a new party (the People) and different remedies (civil penalties). *Long Beach II* raised legal theories never employed in *Long Beach I*: *E.g.*, fraud claims for misrepresentations of the value of respondents' oil following the end of federal price controls in 1980-81, violation of the California public trust doctrine applicable to the California tidelands, California statutes forbidding unfair business practices, and violation of sections of California's Public Utility Code and Civil Code governing operation of intrastate crude oil pipelines.

Respondents appealed the district court's jurisdictional and summary judgment rulings, arguing that no federal question was presented on the face of the complaint in *Long Beach II* as required by the well-pleaded complaint rule, and that no judgment existed that could have been given preclusive effect when the removal petition was filed, citing *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987), and distinguishing *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n. 2 (1981). On the merits, respondents contended that even if subject matter jurisdiction had existed, summary judgment in *Long Beach II* was erroneous because no identity of issues existed between the two cases permitting application of collateral estoppel.

The Court of Appeals reversed the district court's assertion of removal jurisdiction over *Long Beach II*, concluding that *Feder-*

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[6] "*Long Beach II* ER", as used in this brief, refers to Excerpts of Record filed in the Court of Appeals in that case, and "*Long Beach I* Contract ER" refers to the excerpts filed in the separate *Long Beach I* contract appeal.

[7] *E.g.*, *Long Beach II* ER 763-64, 768-81, 784-93.

ated Department Stores, Inc. v. Moitie was inapplicable. The panel stated that it was unclear that any *Long Beach I* judgment could preclude *Long Beach II* due to the new transactions at issue in a different time period. App. 25a, *citing Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 328 (1955). The panel also stated that *Moitie* was inapplicable because there was no longer any federal judgment in *Long Beach I*, and that remand was compelled by the traditional rules of removal jurisdiction as recently set forth in *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987):

> To allow this type of removal except where a final federal judgment wholly precludes the state court suit would violate "the paramount policies embodied in the well-pleaded complaint rule—that the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court." *Caterpillar*, 107 S.Ct. at 2433.

App. 26a.[8]

The *Long Beach I* "good faith" claim involved conduct by petitioners that frustrated the essential purposes of the pricing provisions of the Contractors' Agreement, a contract respondent City, as trustee for the State, entered into in 1965 with a consortium of petitioners, Texaco Inc. ("Texaco"), Exxon Corporation ("Exxon", formerly Humble), Union Oil Company of California ("Union"), Mobil Oil Corporation ("Mobil"), and Shell Oil Company ("Shell") to develop and purchase the City's production from the Wilmington oil field.[9] The Wilmington field is one of the largest oil fields in California.

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[8] Petitioners are thus wrong in stating the Court of Appeals "assumed" removal was initially proper under *Moitie*. Petition, pp. 11, 15.

[9] Standard Oil of California ("Socal") (later "Chevron") and Atlantic Richfield Company ("ARCO") became non-operating contractors. The City's production constituted by far the largest portion of the Wilmington field.

Petitioners were intimately involved in drafting the Contractors' Agreement,[10] particularly its pricing provisions.[11] Petitioners repeatedly represented during the negotiations that the use of average posted prices would best guarantee that the City receive fair market value for its oil over the thirty-five year term of the contract.[12] The intent of the agreement was that the interrelated pricing provisions and safeguards would result in the payment of market prices for respondents' oil.[13]

Petitioners' own documents contain numerous admissions that, at the time of negotiations and thereafter, petitioners knew their posted prices severely undervalued respondents' oil.[14] Following a series of secret meetings in the early 1960's, petitioners adopted a "3-cut" exchange system, unique to California, to provide as among petitioners, "a pricing basis more nearly reflecting the actual value of the crude."[15] After the Contractors' Agreement was signed, petitioners proceeded systematically to frustrate the agreement's pricing safeguard provisions.[16]

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[10] *E.g., Long Beach I* Contract ER 640 ¶ 10, 634 ¶ 7.

[11] *E.g., Long Beach I* Contract ER 644, 655-57, 660, 652. Socal provided numerous drafts of the pricing provisions, lobbied hard for them, and threatened not to bid if they were not accepted. *E.g., Long Beach I* Contract ER 669-71, 681.

[12] *E.g., Long Beach I* Contract ER 700, 589, 681, 639 ¶ 9.

[13] *E.g., Long Beach I* Contract ER 638-39 ¶¶ 4, 8, 696, 6/24/64 SLC Calendar Item. Petitioners incorrectly state that "a City official" said that a fair and reasonable price standard would "result in a very substantial discount of the bid." Petition, p. 4. This was a statement made by Mr. Wanvig, an attorney for Socal. *Long Beach I* Contract Supp. ER 271, App. 51a.

[14] *E.g., Long Beach I* Contract ER 772, 748, 775, 777, 779.

[15] *E.g., Long Beach I* Contract ER 772, 775, 781.

[16] *E.g.*, petitioners refused to provide pricing information as required by Article 9(d), thus preventing the City from invoking the most favored nation clause in Article 9(c). *E.g., Long Beach I* Contract ER 829-831 ¶¶ 5, 6, 9. Using their control over the proprietary intrastate crude oil pipeline system in California, petitioners prevented other oil

After discovering petitioners' wrongdoing,[17] respondents filed *Long Beach I* in the United States district court charging a price fixing conspiracy in violation of the Sherman Act and alleging breach of the covenant of good faith and fair dealing implied in every California contract. Respondents also charged that petitioners' conduct violated the statutory duty of good faith imposed on them by California Commercial Code §§ 1203, 2103(1)(b) and 2305(2) (requiring a party with power to set prices to do so in good faith).

The Court of Appeals reversed the district court's grant of summary judgment for petitioners on the good faith claim (App. 49a, 53a), recognizing that "California law further requires that a party granted discretionary power under a contract, including the discretionary power to set prices, must exercise that power in good faith."[18] The court rejected petitioners' argument that their contractual obligation required payment only of average posted prices: "Compliance with the letter of the contract's provisions does not constitute good faith if one's bad faith actions render those provisions invalid or inoperative." App. 22a.

REASONS FOR DENYING THE WRIT

I

The Well-Pleaded Complaint Rule Defeated Federal Question Jurisdiction And Foreclosed Removal Of Long Beach II

Remand of *Long Beach II* to state court is unassailable for a number of reasons: (1) A state court action cannot be removed to

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companies which lacked access to pipelines from competing as "substantial purchasers" for respondents' oil under Article 9(b). *E.g., Long Beach I* Contract ER 714, 717, 719, 723, 764.

[17] The smoking gun was a Mobil/Union 3-cut cash valuation document inadvertently produced by Mobil during an audit in 1974, which was immediately taken from the hands of respondents' auditor by a Mobil employee. *E.g., Long Beach I* Contract ER 833-37.

[18] App. 20a-21a, citing *Perdue v. Crocker Nat'l Bank*, 38 Cal.3d 913, 923 (1985), *appeal dism'd for want of jurisdiction*, 475 U.S. 1001 (1986), and Cal. Uniform Commercial Code § 2305(2).

federal court unless it could have been brought there originally, and *Long Beach II* contained no federal claim; (2) a federal defense cannot be the basis for removal, and petitioners relied only upon an anticipated collateral estoppel defense; (3) a plaintiff is the master of his complaint and may choose to rely exclusively on state law, as respondents did in *Long Beach II*. Each of these principles has been recently reaffirmed by this Court in a series of unanimous decisions. *Oklahoma Tax Comm'n v. Graham*, 489 U.S. ____, 103 L.Ed.2d 924 (1989); *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987); *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983).[19]

There has never been federal jurisdiction over this case, not at the time of removal or otherwise. The district court was erroneously persuaded by petitioners to apply "artful pleading" to recharacterize purely state law claims as "arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331.[20]

Long Beach II could not have been brought in federal court. It is black letter law that removal is impermissible unless original federal jurisdiction is present. *Oklahoma Tax Comm'n v. Graham*, 489 U.S. ____, 103 L.Ed.2d 924, 928 (1989); *Caterpillar*, 482 U.S. at 392. The existence of federal question jurisdiction under 28 U.S.C. § 1331 is governed by the "well-pleaded com-

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[19] These precepts have been established for decades. *E.g., Gully v. First Nat'l Bank in Meridian*, 299 U.S. 109, 118 (1936) (Cardozo, J.) ("We shall be lost in a maze if we put that compass by"); *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 672-73 (1950) (Frankfurter, J.).

[20] This Court in *Caterpillar*, citing the dissent in *Moitie*, observed:

> "Although 'occasionally the removal court will seek to determine whether the real nature of the claim is federal, regardless of plaintiff's characterization, . . . most of them correctly confine this practice to areas of the law pre-empted by federal substantive law.' "

482 U.S. at 397 n.11, *citing Moitie*, 452 U.S. at 410 n.6 (Brennan, J., dissenting).

plaint" rule requiring determination of the presence of federal question jurisdiction only from the face of plaintiff's statement of his own claim in state court. *Oklahoma Tax Comm'n v. Graham*, 103 L.Ed.2d at 928-29. No federal question of any kind existed on the face of *Long Beach II*, and petitioners have never contended otherwise.

Petitioners erroneously persuaded the district court that federal question jurisdiction could be generated by an anticipated defense of collateral estoppel based on their hope that the district court would ultimately enter summary judgment on respondents' good faith contract claim in *Long Beach I*. Even if a judgment had been entered with respect to that claim in *Long Beach I*, such a judgment would have provided no basis for removal of *Long Beach II* because it is "settled law that a case may *not* be removed to federal court on the basis of a federal defense . . ." *Caterpillar*, 482 U.S. at 393 (Court's emphasis); *Oklahoma Tax Comm'n*, 103 L.Ed.2d at 929.

Petitioners cite *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n. 2 (1981), where the "artful pleading" doctrine was invoked to permit removal when a Sherman Act case was first brought in federal court, lost, never appealed, and refiled in state court on exactly the same facts. *Moitie*, a res judicata (bar) case, did not purport to extend the artful pleading doctrine to an anticipated collateral estoppel defense. The federal and state court complaints in *Moitie* concerned "the same alleged offenses, and the same time periods," *Moitie*, 452 U.S. at 396, and thus claim preclusion (bar) was present. *Long Beach II*, on the other hand, concerns different events and transactions in a different time period from *Long Beach I*, and thus could not be barred. *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 328 (1955) (no claim preclusion arises from a judgment concerning an earlier time period because the judgment "cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case").[21]

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[21] *Accord, Cromwell v. Sac County*, 94 U.S. 351, 353 (1877); *Restatement (Second) of Judgments* § 24, *illustration 12* (1982). The distinc-

Any suggestion that *Moitie* could be expanded beyond a federal judgment on a federal claim completely barring a later state action was effectively foreclosed by *Caterpillar*, 482 U.S. at 392-93, and *Oklahoma Tax Comm'n*, 103 L.Ed.2d at 928-29. The Court of Appeals correctly rejected petitioners' argument that alleged "evasion" can somehow confer federal jurisdiction. Petition, p. 10. A state court, of course, is competent to, and must determine the preclusive effect of a federal judgment.[22] Under the master of the complaint rule, a plaintiff may choose to "avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar*, 482 U.S. at 392. Further, petitioners seek to recast state law claims as "federal" based on a *Long Beach I* ruling on a pendent, state law contract claim.[23] Under these circumstances, there was

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tions between res judicata (bar) and collateral estoppel (issue preclusion) stated by this Court in *Cromwell v. Sac County*, 94 U.S. 351 (1877) are as valid today as when they were written. *E.g., Nevada v. United States*, 463 U.S. 110, 130-31 (1983) (relying upon *Cromwell* for these very principles).

Had there been a judgment on the *Long Beach I* good faith claim, only issue preclusion (or collateral estoppel) could arguably have been invoked due to the entirely separate time periods involved. Petitioners make no serious argument that collateral estoppel applies, as, indeed, they cannot. Identity of facts and law are required. *Montana v. United States*, 440 U.S. 147, 155 (1979); *Cromwell*, 94 U.S. at 360. Petitioners rested below on the conclusory assertion that *Long Beach II* is the same as *Long Beach I*, yet plaintiffs made an extensive factual showing of changed circumstances. *Long Beach II* ER 663-1034; *see* p. 4, *supra*.

[22] Principles of comity and federalism prohibit any presumption of waywardness by state courts. *See Allen v. McCurry*, 449 U.S. 90, 96 (1980) (courts' recognition of each other's judgments "promote[s] the comity between state and federal courts that has been recognized as a bulwark of the federal system"); *Calhoun v. Franchise Tax Board*, 20 Cal.3d 881, 887 (1978) ("A federal judgment is as final in California courts as it would be in federal courts").

[23] *See* App. 89a-90a.

nothing federal to be artfully pled. Finally, respondents proceeded to and did perfect a successful federal appeal.[24]

The Court Of Appeals Opinion

Petitioners' attack on the Court of Appeals' reasoning cannot create federal jurisdiction. Petitioners meticulously avoid trying to justify removal of *Long Beach II* on the grounds they persuaded the district court to accept. They do not even mention this Court's dispositive decisions in *Caterpillar* and *Oklahoma Tax Comm'n.*[25] Instead, their whole brief is devoted to explaining why the Court of Appeals should not have ordered remand of the case to the state court after it had reversed the summary judgments in *Long Beach I* on both the antitrust and good faith claims.

By petitioners' reasoning, a state law case should remain in federal court under *Moitie* "artful pleading" despite the fact that there has ceased to be any federal court judgment allegedly to be protected or for respondents to avoid. Whatever the application of petitioners' diversity cases to *Moitie* "artful pleading", if the plaintiff gains a reversal, no policy mandates protecting an erroneous judgment which has no preclusive effect and which did not exist at the time of removal.

Petitioners' own arguments compel denial of their petition. Petitioners assume that there was jurisdiction at the time of removal. At that time, there was only an interlocutory ruling on the *Long Beach I* good faith claim subject to a then pending motion for reconsideration. *Moitie*, which involved a nonappeala-

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[24] *Cf. Moitie*, 452 U.S. at 396 ("Moitie and Brown, however, chose not to appeal . . . "). Contrary to petitioners' assertions, in October, 1985, the year before *Long Beach II* was filed, respondents requested the district court to enter a final judgment pursuant to Fed.R.Civ.P. 54(b) on the good faith claim if respondents' motion for reconsideration on the merits was denied. *See Long Beach I* Clerk's Docket 2050, 2051, 2064. Petitioners successfully opposed that motion.

[25] Further, petitioners ignore the fact that a State is the plaintiff in this case. *See Franchise Tax Board*, 463 U.S. at 21 n. 22 ("considerations of comity make us reluctant to snatch cases which a State has brought from the courts of that State, unless some clear rule demands it").

ble final judgment, could not apply. The petition must be rejected, assuming arguendo the applicability of petitioners' cases, because the subsequent event of a federal judgment cannot retroactively confer federal jurisdiction. Petition, pp. 11-14.

II

Disposition Of The State Claims Should Not Be Delayed Pending Disposition Of The Antitrust Petitions

The Court of Appeals did not "intertwine" the good faith claim with the Sherman Act claim in *Long Beach I* as petitioners assert. The court only stated the rather modest proposition that "the same anticompetitive price posting that would violate the antitrust law would also constitute bad faith dealing in violation of the state law duty of good faith imposed by Cal. Com. Code § 1203." App. 22a. It is not necessary for respondents to prove a federal antitrust violation in order to establish petitioners' liability under the implied covenant of good faith claim.[26]

Substantial evidence revealed petitioners' systematic frustration of the letter and spirit of the contractual provisions[27] in violation of the California implied covenant of good faith and fair dealing.[28]

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[26] Petitioners cannot seriously contend that the elements of a Sherman Act Section 1 violation are identical to those of a good faith contract claim under California law. Proof of a conspiracy and restraint of trade are required for a Section 1 case. In contrast, a violation of good faith requires only proof of unilateral conduct which frustrates the benefit of a single contractual bargain. *See e.g., Seaman's Direct Buying Service, Inc. v. Standard Oil Co.*, 36 Cal.3d 752, 768 (1984).

[27] *See* pages 5-7, *supra.*

[28] The implied covenant has long been recognized in California in order to protect the benefit of contractual bargains. *See e.g., Universal Sales Corp. v. California Press Mfg. Co.*, 20 Cal.2d 751, 771 (1942); *California Lettuce Growers, Inc. v. Union Sugar Co.*, 45 Cal.2d 474, 484 (1955).

The "covenant requires that neither party do anything which will deprive the other of the benefits of the agreement". *Seaman's Direct Buying Service, Inc. v. Standard Oil Co.*, 36 Cal.3d 752, 768 (1984). It

Petitioners' willful concealment of information concerning the higher valuations given to respondents' oil in petitioners' 3-cut exchanges alone gives rise to liability here. *Restatement (Second) of Contracts* § 205, *comment d* (1981) ("Subterfuges and evasions violate the obligation of good faith in performance . . ."). [29] Furthermore, when one party to a contract acquires discretionary power over price, as here, the covenant of good faith imposes a duty to set prices "in accordance with reasonable commercial standards of fair dealing in the trade." *E.S. Bills, Inc. v. Tzucanow*, 38 Cal.3d 824, 833 (1985). Courts routinely substitute a reasonable price where a posted price standard fails without inquiring as to whether a violation of the antitrust laws occurred. [30]

The good faith claim is not redundant as petitioners assert. The rule against double recovery for the same injury has never been applied to prevent a plaintiff from seeking relief for the same injury on more than one theory, or to foreclose all recovery if one theory is rejected. Since petitioners' sole argument on the *Long Beach I* good faith claim is assumed identity to the *Long Beach I* antitrust claim and because no such linkage exists, petitioners' requested relief should be denied.

Petitioners further seek to have *Long Beach II* held in abeyance pending disposition of the *Long Beach I* antitrust petitions. Petition, pp. 17-18. The lack of subject matter jurisdiction over *Long Beach II* cannot be cured even if this Court should grant a writ of certiorari and overturn the antitrust case. The Court of

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imposes "the duty to do everything that the contract presupposes that [each party] will do to accomplish its purpose". *Berkeley Lawn Bowling Club v. City of Berkeley*, 42 Cal.App.3d 280, 286-87 (1974).

[29] *Universal Sales Corp. v. California Press Mfg. Co.*, 20 Cal.2d 751, 771-72 (1942) ("withholding information" violated the good faith covenant).

[30] *E.g., North Central Airlines, Inc. v. Continental Oil Co.*, 574 F.2d 582, 593 (D.C. Cir. 1978) (under U.C.C. § 2305, where agreed posted price standard fails, a reasonable price is substituted); *Continental Oil Co. v. United States*, 184 F.2d 802 (9th Cir. 1950) (where defendants in a contract case had power over crude oil prices due to control of pipelines, reasonable price substituted).

Appeals' conclusion in this case is compelled by essential principles of federal jurisdiction which have been recently reaffirmed by this Court in a series of unanimous decisions.

By erroneously persuading the district court to accept removal jurisdiction over *Long Beach II*, petitioners have delayed a state court trial for years. By erroneously persuading the district court to grant summary judgment on *Long Beach II*'s state law claims based on an erroneous summary judgment in *Long Beach I*, petitioners sought to foreclose respondents from ever having a trial in *Long Beach II* on the merits in either the state or federal courts. Having lost in the Court of Appeals, petitioners now seek the same result in this Court. Failing that, petitioners seek a delay in ruling on this petition for as long as this Court will tolerate it. Petitioners' maneuvering to avoid trial of *Long Beach I* and *Long Beach II* should end now.

CONCLUSION

The petition for a writ of certiorari should be denied.

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Respectfully submitted,

GARY L. HALLING

ROYCE H. SCHULZ
GARY L. HALLING*
THOMAS D. NEVINS
BROAD, SCHULZ,
LARSON & WINEBERG
One California Street, 14th Fl.
San Francisco, CA 94111
(415) 986-0300

GARY W. HOECKER
M. BRIAN MCMAHON
HOECKER, MCMAHON &
WADE
612 S. Flower Street
Suite 800
Los Angeles, CA 90017
(213) 617-8133

JOHN R. CALHOUN
City Attorney

JAMES N. MCCABE
Deputy City Attorney
333 West Ocean Boulevard
Long Beach, CA 90802

JOHN K. VAN DE KAMP
Attorney General

ANDREA S. ORDIN
Chief Assistant Attorney
General

SANFORD N. GRUSKIN
Assistant Attorney
General
3580 Wilshire Boulevard
Los Angeles, CA 90010

RICHARD N. LIGHT
Deputy Attorney General
State Building, Room 6000
350 McAllister Street
San Francisco, CA 94102

Counsel for Respondents

The People of the State of California,
The State of California and The City of Long Beach

* Counsel of Record